

**Letter of Findings: 02-20170760  
Corporate Income Tax  
For the Year 2015**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Given that Out-of-State Company was a first-time filer and that 2015 was the first year that partnerships were required to file an IT-65 Indiana Partnership composite return, the Department agreed that it should exercise its discretion to abate the ten-percent late penalty.

### ISSUE

#### **I. Corporate Income Tax - Late Penalty.**

**Authority:** IC § 6-3-4-12; IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that it is entitled to an abatement of the late penalty imposed at the time Taxpayer filed its 2015 Indiana Partnership Return.

### STATEMENT OF FACTS

Taxpayer is an out-of-state company which filed a 2015 Indiana Partnership Return (IT-65). The return reflected income obtained from the one-time sale of an Indiana asset. The return was the first time Taxpayer had filed an Indiana return. The return was untimely filed approximately 30 days following the date the return was due.

The Indiana Department of Revenue ("Department") imposed a ten-percent late payment penalty. Taxpayer disagreed with the imposition of the penalty and submitted a protest to that effect.

An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

#### **I. Corporate Income Tax - Late Penalty.**

### DISCUSSION

Taxpayer argues that it is entitled to an abatement of the ten-percent late penalty.

Taxpayer believes that its circumstances entitle it to abatement of the penalty. Taxpayer states that it paid the original tax amount in full, that it was a "first year taxpayer," and that "this is the first year under the new composite withholding requirements . . . ."

IC § 6-8.1-10-2.1(a)(2) imposes a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty." (Emphasis added).

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined

on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation [45 IAC 15-11-2](#)(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the negligence penalty - is presumptively valid.

Taxpayer is correct in that 2015 was the first year under which non-resident partners were required to file a composite return pursuant to IC § 6-3-4-12. The Department also recognizes that 2015 was the first year Taxpayer was required to file an Indiana return.

Both the Department and Taxpayer recognize that the return was untimely. However, there is insufficient information to establish that Taxpayer's position was so egregious as to constitute "willful neglect." Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the ten-percent negligence penalty should be abated.

### **FINDING**

Taxpayer's protest is sustained.

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